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August 4, 2000

Frank Shafroth
National Governors Association
Streamlined Sales Tax Project
444 N. Capitol Street, NW, Suite 425
Washington, DC 20001-1538

RE: Direct Marketing Association - Sales/Use Tax Reform Proposals

Dear Frank:

On behalf of the Direct Marketing Association, please find enclosed several sales/use tax reform proposals which it believes should be incorporated into any interstate compact designed to simplify and harmonize the existing morass of disparate state sales/use tax laws. DMA recognizes that the existing system arose in an economic environment significantly different than that which now confronts interstate marketers. Both states and multistate merchants are now at an historical juncture where their combined efforts, along with those of Congress, could result in a substantially reformed sales/use tax system designed for the commercial and revenue needs of the 21st Century.

It is my understanding that the NGA's Streamlined Sales Tax Project will explore possibilities for substantial reform of state and local sales/use taxes, and that the results of those efforts will form the basis for further discussions with industry representatives and appropriate congressional committees. The Direct Marketing Association is prepared to be an active participant in this process and to engage in a constructive dialogue with state and local government officials to re-engineer the existing tax system to better serve the interests of both government and electronic commerce merchants.

I assume that you are the appropriate contact person for the Streamlined Sales Tax

Frank Shafroth

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Project. After you and the other government representatives have had an opportunity to review the enclosed proposals, I would appreciate your contacting me and advising how DMA can best engage in direct discussions with the state representatives on these issues and work together toward a simplified sales/use tax system. I look forward to your response.

Very truly yours,

BRANN & ISAACSON, LLP

A handwritten signature in black ink, appearing to read "G. Isaacson", written over a horizontal line.

George S. Isaacson

GSI/dmg

Enclosure

**Tax Reform Proposals
For Submission To States' Streamlined Sales Tax Project**

I. TAX RATES

- A. Rate Structure
 - 1. One tax rate per state for all commerce.
- B. Frequency Of Rate Changes
 - 1. 120 day advance notice of rate changes.
 - 2. Rate changes only on January 1 and July 1.

II. TAX BASE

- A. Greater Uniformity Of Tax Base
 - 1. Common definitions of taxable and exempt products.
 - 2. Commitment among Participating States to adopt a uniform tax base within 10 years.
 - 3. Elimination of tax on shipping and handling charges.

III. TAX FORMS

- A. Standardized Forms
 - 1. Single multi-state registration form.
 - 2. Single multi-state spreadsheet-style remittance form.
 - 3. Standard resale certificate (no state modifications or varying certificate numbers).
 - 4. Standard exemption certificate and common database of exempt organizations.

IV. CENTRALIZED ADMINISTRATION

- A. Centralized Filing For Each Multi-State Vendor
 - 1. One central registration point applicable to all Participating States.
 - 2. One spreadsheet-style remittance report covering all Participating States.
- B. Administrator State - Each Multi-State Vendor Must Select A Participating State As Its Administrator State
 - 1. Administrator State is the filing point for all registrations and remittances.
 - 2. Administrator State authorized to conduct audits of the multi-state vendor on behalf of all Participating States.
- C. Audits
 - 1. A single audit on behalf of all Participating States is conducted by the Administrator State (unless the vendor requests to be audited by each individual taxing state).
 - 2. Audits will be conducted no more frequently than once every two years, unless there is reasonable basis to believe that there is fraud or financial insolvency.
 - 3. Each Participating State must give a multi-state vendor the option of submitting a protested tax assessment to a mediation-arbitration process in lieu of pursuing administrative appeals and judicial review in the individual taxing state.

V. LIMITATION ON VENDOR LIABILITY

- A. A retailer shall not be liable to a taxing state for uncollected use taxes if the customer fails to remit to the retailer the applicable tax amount in the following circumstances:
 - 1. Customers paying by credit card:
 - a) The retailer determined the applicable tax by using tax collection software certified by the state.

2. Customers paying by check or money order:
 - a) The retailer provided a general notice in its advertising that applicable use tax should be included with payment.
 - B. Uniform Bad Debt Provisions
- VI. VENDOR DISCOUNT
 - A. Reasonable Reimbursement Of Retailer Collection Costs
 1. The vendor discount should be increased and standardized among the Participating States to reflect the actual average costs of collection to retailers.
 2. Increased vendor discount should be applicable to all retailers.
 3. Joint state government-retail industry panel should be established to determine the real collection costs incurred by vendors (perhaps by different categories of retailers), with an on-going responsibility to recommend adjustments in vendor discounts as cost elements change over time.
- VII. SOURCING
 - A. Gift Transactions
 1. In third-party donee transactions, no use tax should be imposed unless the purchaser and the donee are located in the same state.
- VIII. CONSUMER PRIVACY
 - A. Limits On Demands For Consumer Information
 1. States should not be allowed to require vendors to obtain any information from consumers other than that which is necessary for completion of the sales transaction.
 - B. Limits On Use Of Consumer Information
 1. States may not use personally identifiable consumer-provided information for any purpose other than determination of use tax liabilities.
 2. States will conform to privacy assurance standards and procedures (both as to audit practices and data storage) established by an independent certifying agency which will annually report on state compliance with the established standards.
- IX. *DE MINIMIS* EXCEPTION FOR REMOTE SELLERS
 - A. National Sales By A Remote Seller Before Being Subject To Collection Duties
 1. Ten million dollars (CPI adjusted based on Year 2000).
 - B. State Sales By A Remote Seller Before Being Subject To Collection Duties For That State
 1. Five hundred thousand dollars (CPI adjusted based on Year 2000).
- X. ADOPTION OF SIMPLIFIED AND UNIFORM LAW BY CRITICAL MASS OF STATES
 - A. Number Of States
 1. 30, plus
 - B. Percentage National Population
 1. 70% of national population must reside in those states.
- XI. FEDERAL COURT JURISDICTION REGARDING UNCONSTITUTIONAL STATE TAXATION
 - A. Tax Injunction Act
 1. Amend Tax Injunction Act to grant federal court jurisdiction over cases in which it is alleged that a state tax law or practice violates the U.S. Constitution.

B. Recovery of Attorney Fees

1. As in other cases where a plaintiff proves a state violation of a federally-guaranteed right, permit taxpayers in actions alleging a violation of their constitutionally protected rights to collect their attorney fees if successful in the litigation.

ANNOTATIONS FOR TAX REFORM PROPOSALS

I.A.1 - Multiple state and local tax rates are burdensome for all multi-state retailers, including for those which have nexus in numerous states (many DMA members fall into this category), and the great variety of rates are confusing to consumers. True tax simplification must begin by eliminating the ever-expanding number of tax jurisdictions. This was a reform measure unanimously agreed upon during the NTA Project.

I.B.1 and 2 - Catalog companies need long lead times because of lay-out and printing requirements to change their catalog copy and order forms regarding customer tax obligations.

II.A. 1 and 2 - The disparate tax base among various states is one of greatest causes of customer confusion and vendor compliance error. States should move towards substantially greater uniformity in their tax bases.

II.A.3 - The disparity among the states regarding taxation of shipping and handling charges is especially confusing to consumers, and it forces catalog companies to develop complex order forms (which look more like tax forms). As a service, delivery charges should be eliminated from the tax base.

III.A.1,2,3 and 4 - Standardization of forms is one of the easiest and least painful steps for the states to take.

IV.A. 1 and 2 - Centralized filing, with only one compliance point of contact for each retailer, is a simple and logical step towards administrative simplification.

IV. B. 1 and 2 - An Administrator State or "base state" system substantially reduces the administrative complexity of tax administration for multistate retailers. It has worked well for the states and the Canadian Provinces in regard to the state and provincial fuel tax obligations of interstate and international trucking firms. To the extent that states expect interstate marketers to be able to comply with a variety of state use taxes, then it is certainly appropriate to expect that the revenue departments of the Participating States will be able to administer the system (especially if simplified) on behalf of their sister states.

IV.C.1 and 2 - A single audit by the Administrator State on behalf of all Participating States can reduce the time and expense of coping with multiple use tax audits. Similarly, by limiting the frequency of audits (but permitting audits well within each state's statute of limitations), the burdens and interruptions of multiple state tax audits is reduced.

IV.C.3 - Forcing an out-of-state retailer to hire local counsel and proceed through the arcane administrative and appeal procedures of a foreign jurisdiction is one of the principal concerns of interstate retailers regarding collection of state use taxes. An elective mediation process, followed by binding arbitration of taxpayer protests, would be a quick and cost-efficient means to allow remote sellers to obtain a fair resolution of their contested assessments. Currently, many state administrative and judicial appeal procedures are simply too slow and too expensive to

permit a remote seller to challenge the assessment.

V.A.1 - Changes in tax rates and taxable products present the risk that vendors will err in the calculation of applicable taxes. Certified tax collection software reduces that risk and its economic consequences.

V.A.2 - In contrast to a traditional consumer transaction conducted over a sales counter, in the remote sales context, a customer may not necessarily include the applicable sales tax in his payment, despite being asked to do so by the vendor. This is especially problematic where payment is made by check and the customer errs in his self-calculation of the tax. In those circumstances, post-sale collection of the tax is prohibitively expensive for the retailer.

V.A.B - A retailer should not be obligated to remit use tax to a state on the full value of a customer order when the retailer does not collect full payment from its customer. Currently, there is no consistent treatment of bad debts among the states. Retailers are often left holding the bag on state taxes. Similarly, on installment sales, the tax should be remitted to the state on a proportional basis as payments are received by the retailer from the consumer.

VI.A. 1, 2, and 3 - There is no policy justification for retailers being forced to subsidize the states for the expense of collecting use taxes from state residents. If states believe that retailer-collection of use taxes is the most efficient means of collecting those taxes (as compared to efforts by the states to collect the tax directly from their citizens), then the states should reimburse retailers for all the costs they incur in administering the tax collection system on behalf of the states. Indeed, in the states' "Zero Burden Proposal" before the Advisory Commission On Electronic Commerce, it was stated that the states should assume all the expense of use tax collection administration.

VII.A.1 - Many remote consumer sales involve situations where the buyer is not the recipient of the product being delivered (e.g., holiday season gifts sent to family members). Where the buyer and the donee are located in different states, there should be no use tax imposed on the transaction. (The buyer is not "using" the product in his home state, so no tax should be imposed by that state; and the donee is not the purchaser of the product, so the donee state should not impose a tax on the recipient of a gift.)

VIII.A.1 and B.1 - A reasonable de minimis threshold will minimize the deterrent effect of use tax collection on new business entering the electronic commerce marketplace.

IX.A.1 and B.1 - A reformed sales/use tax system designed to achieve substantial simplification and greater uniformity does little good if it is not widely - indeed, almost universally - adopted by the states.

X.A.1 - If state tax laws are to be given expanded national scope, then the national court system should be given authority to hear claims that the administration of those tax laws violates the federal constitution. This is especially important where the taxpayer is not a resident of the state imposing the tax obligation.

X.B.1 - Statutory provisions for the recovery of attorney fees are not only intended to reimburse successful plaintiffs for the litigation costs they incurred; such laws are also intended to deter parties (including states) from violating the constitutional rights of individuals and businesses. Any expansion of state tax authority to remote sellers carries a significant risk of new violations of constitutional law. (Indeed, case precedent is already replete with examples of state tax administrators violating the constitutional rights of taxpayers.) The threat of paying a successful litigant its attorney fees would be an important constraint on state revenue department abuse of taxpayer rights.

XI.A.1 - Many aspects of electronic commerce are instantaneous and anonymous, including some forms of payment. The growth and development of electronic commerce should not be impeded by state revenue department demands for the collection of consumer information which goes beyond that which is necessary for completion of the transaction.

XI.B.1 - American consumers are entitled to strict procedures and ironclad assurances that the information obtained by government officials will only be use for the intended purposes and not inappropriately disseminated or shared with other government agencies or private entities.